

ADMINISTRATIVE ORDER



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IN THE MATTER OF:)

NL Industries Superfund Site)
Pedricktown, Oldsman Township,)
Salem County, New Jersey)

C&D Technologies, Inc.,)
Johnson Controls, Inc., and)
Honeywell International, Inc.)
(f/k/a Allied Signal, Inc.),)

Respondents)
_____)

U.S. EPA Index No.
CERCLA-02-2012-2028

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I. INTRODUCTION AND JURISDICTION

1. This Order directs C&D Technologies, Inc., Johnson Controls, Inc., and Honeywell International, Inc. (f/k/a Allied Signal, Inc.) (the "Respondents") to perform work in accordance with this Order and all attachments that are necessary to complete the remedial design of the Selected Remedy for groundwater described in the Operable Unit 1 Record of Decision for the NL Industries Superfund Site ("Site") located in Pedricktown, Salem County, New Jersey. This Order is issued to the Respondents by EPA pursuant to the authority vested in the President of the United States by Section 106(a) of CERCLA, as amended, 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA by Executive Order 12580, dated January 23, 1987, and was redelegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B. This authority was further redelegated on November 23, 2004, by the Regional Administrator of EPA, Region 2 to the Director of the Emergency and Remedial Response Division by EPA Region 2 Delegation R-1200.

II. FINDINGS OF FACT

2. The Site encompasses approximately 44 acres, located at Pennsgrove-Pedricktown Road in Pedricktown, Salem County, New Jersey, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action depicted generally on the map attached as Appendix C.

3. Between 1972 and 1984, NL Industries, Inc. and subsequently National Smelting of New Jersey (NSNJ), operated both a secondary lead smelting and a lead-acid battery reclamation businesses at the Site.

4. As a result of these operations, soil at the Site was contaminated with metals. Elevated levels of lead, copper and zinc were also detected in the stream sediment and surface water. Groundwater contamination detected at the Site consisted primarily of lead and cadmium, with localized areas of elevated levels of volatile organic compounds.

5. The Site was listed on the National Priorities List in 1983 and a remedial investigation and feasibility study were conducted between 1986 and 1993.

6. EPA divided the Site into two Operable Units ("OUs") to facilitate remedial activities.

7. On September 27, 1991, the ROD for OU2 was issued by EPA and addressed slag and lead oxide piles, contaminated surfaces and debris, and contaminated standing water. OU2 activities were initiated in 1992 and were completed in 1995.

8. On July 8, 1994, the Record of Decision for OU1 ("OU1 ROD") was issued by EPA and addressed the remediation of soil, groundwater, surface water, and stream sediment. OU1 activities for the soil and stream sediment were initiated in January 2000 and are still ongoing. For groundwater, the remedy selected in the OU1 ROD was pump and treat and institutional controls.



9. On June 10, 1996, EPA and a group of respondents, including Respondents, entered into an Administrative Order on Consent, to perform the remedial design for the OU1 remedy selected in the OU1 ROD.

10. On April 1, 1999, a Consent Decree was entered by the United States District Court for the District Court of New Jersey. The consent decree provided that a group of defendants, including Respondents, perform the remedial action for the OU1 remedy selected in the OU1 ROD.

11. Due to source removal and natural attenuation processes, there was a decrease in contaminant concentrations for the groundwater at the Site.

12. Subsequent to the issuance of the consent decree, additional groundwater studies were performed by the Respondents, with EPA oversight. Based on these studies and the development of a focused feasibility study by Respondents, EPA determined that it was appropriate to amend the remedy selected in the OU1 ROD for groundwater. The selected remedy for soil and sediment was not modified.

13. On September 13, 2011, EPA issued an amendment to the ROD ("OU1 ROD Amendment"). *See*, Appendix A. The OU1 ROD Amendment describes the changes in the remedy for groundwater. The OU1 ROD Amendment describes the Selected Remedy for groundwater and provides that the groundwater remedy described in the OU1 ROD is retained as a contingency groundwater remedy.

14. The major components of the Selected Remedy in the OU1 ROD Amendment include in-situ pH adjustment and reagent injection for the contaminated unconfined aquifer via injection wells; monitoring of groundwater; and implementation of institutional controls to restrict the use of contaminated groundwater until cleanup goals are achieved.

15. This Order addresses the design of the Selected Remedy described in the OU1 ROD Amendment.

16. Respondents have continued to demonstrate good faith in working cooperatively with EPA to address the remaining response activities at the Site.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

17. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

18. Each Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

19. Each Respondent is a responsible party under one or more subsections of Section 107 (a) of CERCLA, 42 U.S.C. § 9607(a), for conditions at the Site and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).



20. Many of the substances found in the soil and groundwater at the Site are "hazardous substances" within the meaning of that term as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. The potential for further migration of hazardous substances from the Site poses a "... threatened release of a hazardous substance from a facility" as that phrase is used in Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

23. The contamination and endangerment at this Site constitute an indivisible injury. EPA has determined that the release or threatened release of hazardous substances from the Site may present a threat to public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

IV. NOTICE TO THE STATE

24. Notice of this Order has been given to the New Jersey Department of Environmental Protection.

V. ORDER

25. Based on the foregoing, Respondents are hereby ordered to comply with the following provisions, including but not limited to, all attachments, documents, schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order.

VI. DEFINITIONS

26. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

b. "Day" shall mean a calendar day.

c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

d. "Hazardous Substance" shall mean any substance that falls within the



definition of a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and shall also mean any mixture(s) containing any such hazardous substance(s) at any concentration.

e. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, at 40 C.F.R. Part 300, and all amendments or modifications thereto.

f. "NJDEP" shall mean the New Jersey Department of Environmental Protection or any successor departments or agencies of the State.

g. "OU1 ROD" shall mean the Record of Decision signed on July 8, 1994 by the Regional Administrator, EPA Region 2, and all attachments thereto. The OU 1 ROD addressed the remediation of soil, groundwater, surface water, and stream sediment.

h. "OU1 ROD Amendment" shall mean the Record of Decision Amendment signed on September 13, 2011 by the Director of the Emergency and Remedial Response Division, EPA Region 2, and all attachments thereto. The Amendment is incorporated into this Order and is an enforceable part of this Order. The OU1 ROD Amendment is attached to this Order as "Appendix A."

i. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

j. "Performance Standards" shall mean the cleanup goals as set forth in the OU1 ROD Amendment and other measures of achievement of the goals of the Remedial Action selected in the OU1 ROD Amendment.

k. "Project Coordinator" shall mean the person designated by the Respondents who will be charged with the duty of being at all times knowledgeable of the performance of all Work performed pursuant to this Order.

l. "Remedial Action" or "RA" shall mean the Selected Remedy in the OU1 Rod Amendment.

m. "Remedial Design" or "RD" shall mean the remedial design for the OU1 for the Selected Remedy as set forth in the OU1 Rod Amendment and as specified in the SOW.

n. "Remedial Design Work Plan" or "RD Work Plan" shall mean the work plan to design the Selected Remedy as set forth in OU1 ROD Amendment and as specified in the SOW.

o. "Remedial Project Manager" shall mean the person designated by the EPA who will be charged with the duty of being at all times knowledgeable of the performance of all Work performed pursuant to this Order.



p. "Respondents" shall mean C&D Technologies, Inc., Johnson Controls, Inc., and Honeywell International, Inc. (f/k/a Allied Signal, Inc.) and includes their officers, employees, agents, subsidiaries, assigns and successors.

q. "Section" shall mean a portion of this Order identified by a Roman numeral and includes one or more Paragraphs.

r. "Selected Remedy" is the remedy selected in the OU1 ROD.

s. "Site" shall mean the NL Industries Superfund Site encompasses approximately 44 acres, located at Pennsgrove-Pedricktown Road in Pedricktown, Salem County, New Jersey, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action. A Site map is attached to this Order as "Appendix C."

t. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design at the Site as set forth in "Appendix B."

u. "State" shall mean the State of New Jersey.

v. "United States" shall mean the United States of America, including but not limited to, the United States Environmental Protection Agency.

w. "Waste Material" shall mean any substance which meets the definition of any one or more of the following:

- (1) a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); or
- (2) a "pollutant or contaminant" as those terms are defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); or
- (3) any solid waste under Section 1004 (27) of the federal Resource Conservation & Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); or
- (4) any mixture containing any of the constituents noted in (1), (2), or (3), above.

x. "Work" shall mean all work and other activities that Respondents are required to perform under this Order, including, but not limited to, tasks described in the SOW and any activities required to be undertaken pursuant to this Order.



VII. NOTICE OF INTENT TO COMPLY

27. Respondents shall provide, not later than seven (7) days after the effective date of this Order, written notice to EPA's Remedial Project Manager ("RPM") and Assistant Regional Counsel for the Site at the address specified in Section XVI, stating whether Respondents will comply with the terms of this Order. If any Respondent does not unequivocally commit to perform or finance the Work as provided by this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. If applicable, Respondents' written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondents' assertions.

VIII. PARTIES BOUND

28. This Order shall apply to and be binding upon each Respondent, its principals, officers, employees, agents, directors, subsidiaries, assigns and successors. Each Respondent is responsible for completing the Work and all applicable requirements of this Order. No change in the ownership, corporate status, or other control of each Respondent shall alter any of its responsibilities under this Order.

29. Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, subcontractor, laboratory, or consultant retained to perform any Work under this Order, within five days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing Respondents with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

IX. DESIGNATED PROJECT MANAGER AND COORDINATORS

30. All aspects of the Work to be performed by the Respondents pursuant to this Order shall meet all requirements of applicable federal, state and local laws and be performed under the direction and supervision of a Supervising Contractor. The Supervising Contractor shall be a qualified licensed professional engineering firm. All plans and specifications shall be prepared under the supervision of, and signed/certified by, a licensed New Jersey professional engineer. Respondents shall retain one or more contractor(s) to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within ten (10) days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s)

or subcontractor(s) retained to perform the Work at least ten (10) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within thirty (30) days of EPA's disapproval. With respect any contractor proposed to be Supervising Contractor, Respondents shall demonstrate that the proposed contractor has a quality system that complies with the Uniform Federal Policy for Implementing Quality Systems (UFP-QS), (EPA/505/F-03/001, March 2005), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). EPA will provide written notice if it disapproves of the proposed Supervising Contractor and request that the Respondents propose another Supervising Contractor. Respondents shall notify EPA of the name of the next proposed Supervising Contractor within thirty (30) days of EPA's request. If at any time thereafter, Respondents propose to change a Supervising Contractor, Respondents shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under the Administrative Order.

31. Within ten (10) days after the Effective Date, Respondents shall designate a Project Coordinator, and alternate Project Coordinator, who may be employees of the Supervising Contractor who shall be responsible for the day-to-day management of all Work to be performed pursuant to this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. The Project Coordinator shall not be an attorney. The Project Coordinator shall have adequate technical and managerial experience to manage all Work described in this SOW and under this Order. The Project Coordinator shall be knowledgeable at all times about all Work. The Project Coordinator shall be the primary contact for EPA on all matters relating to the Work at the Site and should be available for EPA to contact during all working days. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 14 days following EPA's disapproval. Receipt by Respondents' Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

X. WORK TO BE PERFORMED

32. The Work to be performed consists of all Remedial Design activities required in the OU1 ROD Amendment and the SOW. Respondents shall perform all action necessary to implement the SOW. The Work performed by Respondents pursuant to this Order shall, at a minimum, be designed to achieve the Performance Standards specified in the OU1 ROD Amendment. Notwithstanding any action by EPA, Respondents remain fully responsible for achievement of the Performance Standards in the OU1 ROD Amendment. Nothing in this Order, or in EPA's approval of any submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the SOW will result in the design of a Remedial Action that will achieve the Performance Standards set forth in the OU1 ROD Amendment. Respondents' compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable Performance Standards.



The RD activities to be performed in support of the implementation of the Work include, but are not limited to, the following:

- A. Development of work plans, tasks, and schedules for: Pre-RD Investigations, including a Pilot Study; Preliminary RD Report (35% completion) which shall include the findings of the Pre-RD investigations and pilot study; Pre-Final RD Report (95% completion); and a Final RD Report (100% completion) (collectively, RD Reports);
- B. Performance of data collection, including groundwater sampling and analysis necessary to design the pH adjustment and reagent injection system, and evaluate the current extent of groundwater contamination;
- C. Performance of a pilot study for the implementation of the groundwater Selected Remedy;
- D. Design of a network of wells and prepare detailed specifications for the implementation of the groundwater Selected Remedy as outlined in the OU1 ROD Amendment;
- E. Evaluation of the need for air monitoring during construction activities at the Site and development, if necessary, of plans to ensure that air emissions resulting from construction activities meet applicable or relevant and appropriate air emission requirements;
- F. Tasks required for establishing institutional controls, such as the implementation of a Classification Exemption Area (CEA) to restrict the use of groundwater until the appropriate groundwater cleanup standards are achieved;
- G. Tasks to conduct an analysis to ensure that any adverse impacts caused by the RA to the streams, surface water bodies and wetland areas will be mitigated; and
- H. Tasks to identify how the RD and the RA will be implemented using the principles specified in EPA Region 2's Clean and Green Policy.

33. Work Plan and Implementation.

a. Within sixty (60) days after EPA's approval of the Supervisory Contractor, Respondents shall submit to EPA a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan") for EPA review and approval. The draft RD Work Plan shall be prepared in accordance with the OU1 ROD Amendment, this SOW, this Order, CERCLA and relevant EPA guidance, including EPA document entitled Guidance on Oversight of Remedial Designs and Remedial Actions performed by Potentially Responsible Parties, (OSWER directive 9355.5-01, EPA/540/g-90-001), dated April 1990, and shall be in conformance, inter alia, with the Superfund Remedial Design and Remedial Action Guidance, dated June 1986, and any updates thereto. The RD Work Plan shall provide for design of the



Selected Remedy set forth in the OUI ROD Amendment, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the OUI ROD Amendment, this Order, and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Order.

b. The draft RD Work Plan shall include tasks, work plans, field work and data collection, and schedules for implementation of the RD, that are necessary to ensure compliance with performance standards, ARARs, or other requirements of the remedy selected in the OUI ROD Amendment, including the preparation and submission of: a Preliminary RD Report (35% completion) which shall include the findings of the Pre-RD Investigations and the pilot study); a Pre-Final RD Report (95% completion); and a Final RD Report (100% completion) (collectively, RD Reports). The draft Remedial Design Work Plan shall also include a draft schedule for remedial action, O&M, and monitoring activities. The schedule shall be in the form of a task/subtask activity bar chart or critical path method sequence of events. The RD Work Plan shall also include a description of how the RD will incorporate the principles found in EPA Region 2's Clean and Green Policy. At a minimum, the draft Remedial Design Work Plan shall include, but not be limited to, the following:

- A. A description of all RD Tasks.
- B. A detailed schedule for all RD activities.
- C. A Field Sampling and Analysis Plan (FSP) which provides for the collection of all data and work necessary to complete RD field activities.
- D. A Pilot Study Work Plan.
- E. A plan for establishing institutional controls, such as the implementation of a CEA to restrict the use of groundwater impacted by the Site until the appropriate groundwater cleanup standards are achieved.
- F. A plan for the performance of air monitoring, as necessary, during construction activities at the Site.
- G. A description of how the RD will incorporate the principles found in EPA Region 2's Clean and Green Policy, found at http://epa.gov/region2/superfund/green_remediation/.
- H. Quality Assurance/Quality Control Project Plan (QAPP).
- I. Health and Safety Plan

The Health and Safety Plan ("HASP") for all activities performed under this Order shall be developed by Respondents to address the protection of public health and safety and the response to contingencies that could impact public health, safety, and the environment. The HASP shall satisfy the requirements of



the Occupational Safety and Health Guidance for Hazardous Waste Site Activities, (June 1990, DHHS NIOSH Publication No. 90-117), and the Occupational Safety and Health Administration, U.S. Department of Labor ("OSHA") requirements cited below:

All activities performed by or on behalf of Respondents shall be performed in such a manner as to ensure the safety and health of personnel so engaged. Activities shall be conducted in accordance with all pertinent general industry (29 CFR Part 1910) and construction (29 CFR Part 1926) OSHA standards, and EPA's Standards Operating Safety Guides (OSWER, 1988), as well as any other applicable State and municipal codes or ordinances. All RD/RA/O&M activities performed by Respondents, their contractors or subcontractors, shall comply with those requirements set forth in OSHA's final rule entitled Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910.120, Subpart H.

J. A plan to ensure that any adverse impacts caused by the Work to streams, surface water bodies and wetland areas will be mitigated.

K. Access and Other Approvals

The draft RD Work Plan shall include descriptions of known access and other approvals and institutional controls which Respondents will need in order to comply with this Order, with the exception of those approvals needed from EPA. This description shall be updated as appropriate, if subsequent approvals are required.

c. Upon approval of the RD Work Plan by EPA, and after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Respondents shall implement the RD Work Plan. Respondents shall submit to EPA and the State all plans, submittals, and other deliverables required under the approved RD Work Plan in accordance with the approved schedule for review. Unless otherwise directed by EPA, Respondents shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. In accordance with the schedule set forth in the EPA-approved RD Work Plan, the Respondents shall submit the findings of the Pre-RD Investigations within the Preliminary RD Report. This will include the results and analysis of all data collected during the Pre-RD field studies, as well as the significant findings and recommendations of the Pilot Study. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of pilot studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings, and sketches; (6) required specifications in outline form; and (7) a preliminary construction schedule.

e. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3)



Construction Quality Assurance Project Plan ("CQAPP"); and (4) RA schedule. The CQAPP which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Project Coordinator, to conduct a quality assurance program during the construction phase of the project.

34. Respondents shall conduct all work in accordance with the SOW, the OU1 ROD Amendment, CERCLA, the NCP, and all applicable EPA guidance. The Project Coordinator shall use his or her best efforts to inform Respondents if new or revised guidances may apply to the Work.

35. Respondents shall perform the tasks and submit the deliverables that the SOW sets forth. EPA will review and comment on the Preliminary RD Report (35% completion), and the Pre-Final RD Report (95% completion). Respondents shall address EPA's comments on each RD Report in the subsequent RD Report (e.g. changes required by comments on the Preliminary RD Report (35% completion) shall be made in the Pre-Final RD Report (95% completion).

36. Upon EPA's approval, this Order incorporates any reports, plans, specifications, schedules, and attachments that this Order or the SOW requires.

37. If any unanticipated or changed circumstances exist at the Site that may significantly affect the Work or schedule, Respondents shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of such circumstances.

38. If EPA determines that additional tasks, including, but not limited to, additional investigatory work or engineering evaluation, are necessary to complete the Work, EPA shall notify Respondents in writing. Respondents shall submit a workplan to EPA for the completion of such additional tasks within 30 days of receipt of such notice, or such longer time as EPA agrees. The workplan shall be completed in accordance with the same standards, specifications, and requirements of other deliverables pursuant to this Order. EPA will review and comment on, as well as approve, approve with conditions, modify, or disapprove the workplan pursuant. Upon approval or approval with modifications of the workplan, Respondents shall implement the additional work in accordance with the schedule of the approved workplan. If, at any time during the Remedial Design process, Respondents become aware of the need for additional data beyond the scope of the approved Work Plans, Respondents shall have an affirmative obligation to submit to EPA's Project Coordinator, within 20 days, a memorandum documenting the need for additional data.

39. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 21 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary.

40. Community Relations Plan. EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. As requested by EPA, Respondents shall provide information supporting EPA's community relations plan and shall participate in the preparation

of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA to explain activities at, or concerning, the Site.

XI. ADDITIONAL RESPONSE ACTIVITIES

41. EPA may determine that in addition to the Work identified in this Order and attachments to this Order, additional response activities may be necessary to protect human health and the environment including meeting Performance Standards. If EPA determines that additional response activities are necessary, EPA may require Respondents to submit a work plan for additional response activities. EPA may also require Respondents to modify any plan, or other deliverable required by this Order, including any approved modifications.

42. Not later than 30 days after receiving EPA's notice that additional response activities are required pursuant to this Section and request for a work plan, Respondents shall submit a work plan for the response activities to EPA for review and approval. Upon written approval by EPA, the work plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondents shall implement the work plan according to the standards, specifications, and schedule in the approved work plan. Respondents shall notify EPA of its intent to perform such additional response activities within 7 days after receipt of EPA's notification of the need for additional response activities.

43. Any additional response activities that Respondents determines are necessary to protect human health and the environment shall be subject to written approval by EPA. If such additional response activities are authorized by EPA, then Respondents shall complete such response activities in accordance with plans, specifications, and schedules approved by EPA pursuant to this Order.

XII. ENDANGERMENT AND EMERGENCY RESPONSE

44. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate or minimize the threat, and shall immediately notify EPA's Remedial Project Manager. In the event of the Remedial Project Manager's unavailability, the Respondents shall notify the Chief of the EPA New Jersey Remediation Branch at (212) 637- 4288, or if such person or such person's delatee is unavailable, the EPA Regional Emergency 24-hour telephone number at (732) 548-8730. Respondents shall take such action in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Contingency Plan and any other documents developed pursuant to the Remedial Action Work Plan. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the RPM or its delatee and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of,



reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

45. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the EPA Project Coordinator, the Chief of the Northern New Jersey Remediation Section of the Emergency and Remedial Response Division of EPA Region II by telephone (212)-637-4380 and the National Response Center at (800)424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken, or to be taken, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

46. Nothing in the preceding Paragraph or elsewhere in this Order shall be deemed to limit any authority of the United States to take, direct or order all appropriate action to protect human health and the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances on, at or from the Site.

XIII. EPA REVIEW OF SUBMISSIONS

47. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; (e) any combination of the above; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action.

48. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 50(a), (b), (c), or (e), Respondents shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA. Following EPA approval or modification of a submission or portion thereof, Respondents shall not thereafter alter or amend such submission or portion thereof unless directed by EPA.

49. Upon receipt of a notice of disapproval, Respondents shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

50. Respondents shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition, or modification of the RD Work Plan. While awaiting EPA approval, approval on condition, or modification of this deliverable, Respondents shall proceed with all other tasks and activities that may be conducted independently of this deliverable, in accordance with the schedule set forth in this Order.

51. For all remaining deliverables not listed above in Subparagraph 52, Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point during the RD.

52. If upon the first resubmission or upon any subsequent resubmission, the plan, report or other deliverable is disapproved by EPA, Respondents shall be deemed to be out of compliance with this Order. In the event that a resubmitted plan, report or other deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondents to correct the deficiencies, in accordance with the preceding Paragraphs of this Section. In addition, or in the alternative, EPA retains the right to amend or develop the plan, report or other deliverable. Respondents shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA. In the event that EPA takes over some of the tasks, Respondents shall incorporate and integrate information supplied by EPA into the final reports.

53. All plans, reports, and other submittals required to be submitted to EPA under this Order shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Order. In the event EPA approves a portion of a plan, report, or other item required to be submitted to EPA under this Order, the approved portion shall be deemed to be incorporated in and an enforceable part of this Order.

54. Respondents may request in writing that EPA approve modifications to EPA-approved reports, schedules, deliverables and other writings required under the terms of this Order at any time during the implementation of the Work required by this Order. Any and all such modifications under this Order must be approved in writing and signed by the Chief of the New Jersey Remediation Branch, Emergency and Remedial Response Division, EPA-Region 2.

a. EPA shall have the sole authority to make any such modifications under this Order

b. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional work unilaterally. EPA also may require Respondents to perform additional work unilaterally to accomplish the objectives set forth in this Order.

XIV. PROGRESS REPORTS

55. In addition to the other deliverables set forth in this Order, Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every fifteenth (15) day of each month following the Effective Date until termination of this Order, unless otherwise directed in writing by the Project Coordinator. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, estimate of the percentage work completed and the developments anticipated during the next reporting period

including any anticipated delays and all efforts made by Respondents to mitigate delays.

XV. COMPLIANCE WITH APPLICABLE LAWS

56. All activities carried out by Respondents pursuant to this Order shall be performed in accordance with the requirements of all federal and state laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the NCP.

57. Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

58. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XVI. REMEDIAL PROJECT MANAGER

59. All communications, whether written or oral, from Respondents to EPA shall be directed to EPA's Remedial Project Manager. Respondents shall submit to EPA and NJDEP copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by certified mail or overnight mail to the following addresses:

2 Copies to: 1 hard copy and 1 electronic

Chief, New Jersey Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
290 Broadway, 19th Floor
New York, New York 10007-1866
Attn: NL Industries Superfund Site Remedial Project Manager

1 Electronic Copy to:

New Jersey Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007-1866
Attn: Site Attorney, NL Industries Superfund Site

60. In the event that EPA requests more than the number of copies stated above of any report or other documents required by this Order for itself or the State, Respondents shall provide the number of copies requested.

61. EPA has the unreviewable right to change its Remedial Project Manager. If EPA changes its Remedial Project Manager, EPA will inform Respondents in writing of the name, address, and telephone number of the new Remedial Project Manager.

62. EPA's RPM shall have the authority lawfully vested in a RPM by the National Contingency Plan, 40 C.F.R. Part 300. EPA's RPM shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order, and to take any necessary response action.

63. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the Remedial Design, as required by Section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA.

XVII. ACCESS TO SITE NOT OWNED BY RESPONDENTS

64. If the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by the clean up, is owned in whole or in part by parties other than those bound by this Order, Respondents will obtain, or use their best efforts to obtain, site access agreements from the present owners within 60 days of the effective date of this Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondents and Respondents' authorized representatives and contractors, and such agreements shall specify that Respondents is not EPA's representatives with respect to liability associated with the activities to be undertaken. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of their failure to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

XVIII. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

65. Respondents shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and their representatives or contractors pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment;

and verifying the data submitted to EPA by Respondents. Respondents shall allow EPA and its authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law.

66. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. 2.203, provided such claim is not inconsistent with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the State of New Jersey without further notice to Respondents. Respondents shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

67. Respondents shall maintain for the period during which this Order is in effect, an index of documents that Respondents claims contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondents shall submit a copy of the index to EPA.

68. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XIX. RECORD PRESERVATION

69. Respondents shall provide to EPA upon request, copies of all documents and information within their possession and/or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

70. Until 10 years after EPA provides notice pursuant to Paragraph 84 of this Order, Respondents shall preserve and retain all records and documents in their possession or control, including the documents in the possession or control of their contractors and agents on and after the effective date of this Order that relate in any manner to the Site. At the conclusion of this document retention period, Respondents shall notify the United States at least 90 calendar days prior to the destruction of any such records or documents, and upon request by the United States, Respondents shall deliver any such records or documents to EPA.

71. Within 90 days after the effective date of this Order, Respondents shall submit a

written certification to EPA's Remedial Project Manager and Site Attorney that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since notification of potential liability by the United States or the State.

XX. DELAY IN PERFORMANCE

72. Any delay in performance of this Order that, in EPA's judgment, that is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

73. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and electronic mail to EPA's Remedial Project Manager within 48 hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within 5 business days after notifying EPA by telephone and electronic mail, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XXI. ASSURANCE OF ABILITY TO COMPLETE WORK

74. Respondents shall demonstrate their ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within 30 days after the effective date of this Order, one of the following:

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a federal or state agency;
- d. A demonstration by each Respondent that it meets the financial test criteria of 40

C.F.R. § 264.143(f) with respect to the estimated cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction; or

e. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of each Respondent, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with each Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder.

75. Respondents shall demonstrate financial assurance in an amount of no less than \$150,000.00 for the Work. If Respondents seek to demonstrate ability to complete the remedial action by means provided under Subsections d. or e. of the preceding Paragraph, it shall re-submit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondents shall, within 30 days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other five forms of financial assurance listed in the preceding Paragraph.

76. At least 7 days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

77. Funding for Work Takeover. Upon the commencement of any work takeover, if (a) for any reason EPA is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the work takeover, or (b) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria, Respondents shall upon written demand from EPA deposit into a special account within the EPA Hazardous Substance Superfund or such other account as EPA may specify, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA. In addition, if at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless Respondents provide a substitute performance guarantee mechanism in accordance with this Section no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee.



XXII. UNITED STATES NOT LIABLE

78. The United States and EPA, by issuance of this Order, or by issuance of any approvals pursuant to this Order, assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order, or Respondents' failure to perform properly or complete the requirements of this Order. Neither the United States nor EPA may be deemed to be a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order, and Respondents shall not represent to anyone that the United States or EPA is or may be a party to any such contract.

79. Respondents shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorney fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on behalf or under their control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA.

XXIII. ENFORCEMENT AND RESERVATIONS

80. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and/or for any other response costs which have been incurred or will be incurred by the United States relating to the Site. This reservation shall include, but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in Section 107(a) of CERCLA.

81. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for their costs, or seek any other appropriate relief.

82. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), *et seq.*, or any other applicable law. Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

83. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA,



RCRA, and any other applicable statutes or regulations.

84. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

85. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

86. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents(s) in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents(s) under section 107 of CERCLA, 42 U.S.C. Section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

87. Notwithstanding any other provision of this Order, failure of Respondents to comply with any provision of this Order may subject Respondents to civil penalties of up to thirty-seven thousand five hundred dollars (\$37,500) per violation per day, as provided in Section 106(b) (1) of CERCLA, 42 U.S.C. § 9606(b) (1), and the Debt Collection and Improvement Act of 1996 (see civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19). Respondents also may be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Order, as provided in Section 107(c) (3) of CERCLA, 42 U.S.C. § 9607(c) (3). Should Respondents violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XXIV. ADMINISTRATIVE RECORD

88. Upon request by EPA, Respondents shall submit to EPA all documents related to the implementation of the Work for possible inclusion in the administrative record file.

XXV. EFFECTIVE DATE AND COMPUTATION OF TIME

89. This Order shall be effective five (5) days following the day that this Order is signed by the Director, Emergency and Remedial Response Division, EPA Region 2, unless a conference is timely requested pursuant to Paragraph 82, below. If such conference is timely requested, this Order shall become effective 3 days following the date the conference is held,



unless the effective date is modified by EPA. All times for performance of ordered activities shall be calculated from this effective date.

XXVI. OPPORTUNITY TO CONFER

90. Respondents may, before the effective date of the Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within 7 days of Respondents' request for a conference.

91. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intend to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to any Respondent's request, any Respondent may appear in person or by an attorney or other representative.

92. Requests for a conference must be by telephone followed by written confirmation sent by overnight mail and electronic mail that day to:

Damaris C. Urdaz
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, N.Y. 10007-1866
Telephone: (212) 637-3140
Telecopy: (212) 637-3096
urdaz.damaris@epa.gov

XXVII. TERMINATION AND SATISFACTION

93. This Order may be terminated by EPA if Respondents demonstrate in writing and certify to the satisfaction of EPA that all Work and activities required under this Order, including any additional work required by EPA, have been performed fully in accordance with this Order and EPA concurs in writing with the certification. Such an approval by EPA, however, shall not relieve Respondents of any remaining obligations under the Order, including those requirements set forth in Section XIX regarding record preservation, or applicable law.

So Ordered, this 25th day of September, 2012.

By: Walter Mugdan
Walter Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency-Region 2

